UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,436	03/14/2001	Michael J. Rojas	13463	3775

23389 7590 05/03/2007 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530	**EXAMINER** WU, RUTAO

ART UNIT	PAPER NUMBER
3628	

MAIL DATE	DELIVERY MODE
05/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Application Number: 09/808,436
Filing Date: March 14, 2001
Appellant(s): ROJAS, MICHAEL J.

MAY 0 3 2007

GROUP 3600

Katherine R. Vieyra
<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 28, 2006 appealing from the Office action mailed April 19, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,338,046	Saari et al	1-2002
6,418,467	Schweitzer et al	7-2002

Cisco "ATM Cell Structures"

http://www.cisco.com/univercd/cc/td/doc/product/atm/c8540/wa5/12_0/7_15c/trouble/cel

ls.htm, (May 8, 2000)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Pat No. 6,338,046 to Saari et al.

Referring to claim 1:

A method for cost accounting of data usage over a network by network users, the

network having a plurality of internal IP addresses and access to a plurality of external

IP addresses over the Internet, the method comprising the steps of:

a) detecting data packets having a source and destination IP address moving

over the network; (col 2: lines 5-7; col 3: lines 60-65; col 4: lines 56-57, Fig 2)

b) classifying the detected data packets based on the source and destination address; (col 4: line 33-34; col 12: lines 35-43; col 13: lines 5-9)

c) assigning the classified data packets to a network user; (col 4: lines 10-14, 55-60)

d) costing the classified data packets based on a predetermined costing scheme; and (col 4: lines 18-30; col 6: lines 59-62; col 7: lines 38-42)

e) accumulating and storing the costed data packets based on the assigned user. (col 5: lines 42-45; col 7: lines 23-26)

Referring to claim 2:

The method of claim 1, wherein step b) of classifying the detected data packets includes in one of at least the following four categories:

Internal IP address to internal IP address;

Internal IP address to external IP address;

External IP address to internal IP address; and

External IP address to external IP address;

(col 4: lines 11-14)

Referring to claim 3:

The method of claim 1, wherein step c) of assigning the classified data packets to the network user includes identifying an IP address to a network user based on network log-on data. (col 4: lines 10-14, 55-60)

Referring to claim 4:

The method of claim 1, wherein the predetermined costing scheme of step d) includes a costing factor based on the amount of bandwidth utilization at the time the data packet is detected. (col 1: lines 42-45; col 4: lines 31-42)

Referring to claim 6:

The method of claim 1, further including the step of transferring the accumulated and stored costed data packets to a host computer over the Internet. (col 2: lines 27-30; col 7: lines 22-26)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saari et al in view of U.S. Pat No. 6418467 to Scheitzer et al.

Saari et al does not disclose a filtering process that excludes certain data from being included in the costing step.

Scheitzer et al discloses that the central event manager (CEM) perform data merges to remove redundant data and then store the data as a billing record, so the collected data would be more useful in billing accounting (col 10: lines 32-35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Saari et al's invention to include a step to

eliminate certain qualified data from being included in billing calculation. Saari et al provides specific motivation by indicating network operators can implement charging strategies for determining the cost of using network connections and other resources within their jurisdiction independent from the charging strategies employed by other network operators. (col 4: lines 20-24)

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saari et al.

Saari et al does not disclose a programmable device for cost accounting that is comprised of a network controller, a processor and a dynamic random access memory.

Saari et al discloses network nodes that facilitate the transfer of information from a source location to a destination location (col 2: lines 4-6; col 6: lines 18-20)

Saari et al discloses that the content of the billing cell comprises information describing the connection established between the source unit and the node and a processor uses the connection information to compute the cost for usage of the connection. (col 28: lines 25-29)

Saari et al discloses that a memory is provided at the node and the processor copies content of the billing cell received from the source unit into the memory. (col 28: lines 19-22)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a node in Saari et al's invention is structurally the same as the programmable device discloses in the application.

(10) Response to Argument

In the Appeal Brief filed, with regards to claim 1 the applicant argues that Saari et al does not teach or disclose "classifying the detected data packets based on source and destination IP address". The Examiner respectfully disagrees. Saari et al disclose "a non-exhaustive list of possible factors that may be used as variables within usage charging formulae include service class type, quality of service, any individual or combination of ATM traffic parameters, connection time, and other traffic flow parameters." (col 4: lines 30-35) Saari et al also disclose "a user establishes an nominal bit rate (NBR) with a network operator. It may be desirable, although not required, to initially set the service class to a non-real-time (nrt) service class as a default setting. Depending on a particular application, the user may require a real-time (rt) service class, which maybe set by the user directly or, typically, by the user's application or communications software." (col 12: lines 34-38) From the above disclosures it can be seen that Saari et al does classify data packets, (whether the data packets are non-real-time or real time) and uses the classification (service class type) to determine the charging formulae. Saari et al also disclose "in addition to a header, a billing cell carries with it two other types of information, namely, billing address information and connection information. The billing address information is used to determine the recipient of the charging information associated with use of a particular connection." (col 5: lines 11-16) This disclosure taken together with col 12 lines 34-38 as cited above can be seen that Saari et al classifies detected data packets based on the source and destination address. The source address is known since the user

establishes an NBR with the network operator and the destination address is also known since the billing address of the recipient is stored in the billing cell of the data packet.

With regards to claim 1, the applicant argues that Saari et al does not teach "assigning the classified data packets to a network user." The Examiner respectfully disagrees. Saari et al disclose "a non-exhaustive list of possible factors that may be used as variables within usage charging formulae include service class type, quality of service, any individual or combination of ATM traffic parameters, connection time, and other traffic flow parameters." (col 4: lines 30-35) Saari et al also disclose "a user establishes an nominal bit rate (NBR) with a network operator. It may be desirable, although not required, to initially set the service class to a non-real-time (nrt) service class as a default setting. Depending on a particular application, the user may require a real-time (rt) service class, which maybe set by the user directly or, typically, by the user's application or communications software." (col 12: lines 34-38) Since variables such as service class type can be used as usage charging formulae and the user needs to set the service class type with the operator (non-real-time service or real-time service) it can clearly be seen that Saari et al assigns the classified data packet to a network user. Without assigning the packets to a network user, Saari et al would not be able to properly charge the user, therefore making the invention non-functional.

With regards to claims 2-4 and 6, the applicant argues that the claims are patentable based upon dependency from independent claim 1. From the response presented above for claim 1, claims 2-4 and 6 are properly rejected.

With regards to claim 5, the applicant argues that Saari et al does not teach "a filtering process to exclude certain predetermined data packets from the costing step." Claims 5 is rejected under U.S.C. 103(a) as being unpatentable over Saari et al in view of Scheitzer et al. Scheitzer et al disclose that the central event manager (CEM) perform data merges to remove redundant data and then store the data as a billing record, so the collected data would be more useful in billing accounting. (col 10: lines 32-35) The applicant argues that the merge process as disclosed by Scheitzer et al at best does not increase the number of records in the data repository, but the number of records in the repository cannot be decreased by the merge process. However, claim 5 as claimed by the applicant does not include the limitation of **decreasing the number or records in the repository** (emphasis added). Claim 5 recites the limitation **"wherein the costing step d) includes a filtering process to exclude certain predetermined data packets from the costing step."** Scheitzer et al does indeed teach such limitation as recited in claim 5. By merging the data records Scheitzer et al eliminates predetermined data packets (such as redundant data packets) and use the merged data records for billing purposes. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Saari et al's invention to include a step to eliminate certain qualified data from being included in billing calculation. Saari et al provides specific motivation by indicating network operators can implement charging strategies for determining the cost of using network connections and other resources within their jurisdiction independent from the charge strategies employed by other network operators. (col 4: lines 20-24)

The applicant also argues that the rejection of claim 5 is improper based on its

dependency from Independent Claim 1. The Examiner respectfully disagrees. Based

on the response presented above for Independent Claim 1, claim 5 is properly rejected.

With regards to claim 7, the applicant argues that Saari et al does not teach "a

programmable device for cost accounting." The Examiner respectfully disagrees.

Claims 7 is rejected under U.S.C. 103(a) as being unpatentable over Saari et al. Saari

et al does not expressly disclose in the specification of a programmable device for cost

account of data use over a network. However, Saari et al does disclose "a system and

method directed to charging for network connection usage implemented in accordance

with the principles of the present invention permits different network operators to

implement charging strategies for determining the cost of using network connections

and other resources within their jurisdiction independent from the charging strategies

employed by other network operators." (col 4: lines 18-25) Therefore, it is obvious that

Saari et al teach a programmable device for cost accounting. If the device is not

programmable then different network operators would not be able to implement their

own charging strategies as disclosed by Saari et al, and thus rendering Saari et al's

invention non-functional.

With regards to claim 7, the applicant argues that Saari et al does not teach

"classifying the detected data packets" or "assigning the data packets to a network

user". The Examiner respectfully disagrees. Saari et al disclose "a non-exhaustive list

of possible factors that may be used as variables within usage charging formulae

include service class type, quality of service, any individual or combination of ATM

traffic parameters, connection time, and other traffic flow parameters." (col 4: lines 30-35) From this disclosure it can be seen that Saari et al teach classify the detected data packets, the packets can be classified based on service class type or quality of service and charged accordingly. Saari et al also disclose "a user establishes an nominal bit rate (NBR) with a network operator. It may be desirable, although not required, to initially set the service class to a non-real-time (nrt) service class as a default setting. Depending on a particular application, the user may require a real-time (rt) service class, which maybe set by the user directly or, typically, by the user's application or communications software." (col 12: lines 34-38) Since variables such as service class type can be used as usage charging formulae and the user needs to set the service class type with the operator (non-real-time service or real-time service) it can clearly be seen that Saari et al assigns the classified data packet to a network user. Without assigning the packets to a network user, Saari et al would not be able to properly charge the user, therefore making the invention non-functional.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
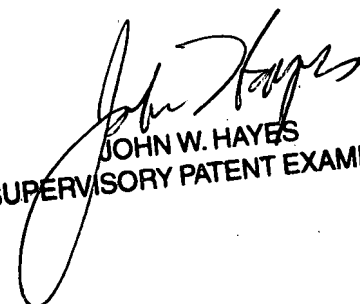
Respectfully submitted,

Rutao Wu

Conferees:

John Hayes – Appeal Conference Specialist

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Vincent Millin – Appeal Conference Specialist